

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals)
of
EDWARD MELTZER and)
FRIEDA LIFFMAN MELTZER)

Appearances:

For Appellant: Meyer Pritkin & Company,
Certified Public Accountants

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate
Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Edward Meltzer and Frieda Liffman Meltzer to proposed assessments of additional personal income tax in the amounts of \$36.69, \$10.33 and \$8.20 against Edward Meltzer and in the amounts of \$36.95, \$10.67 and \$8.20 against Frieda Liffman Meltzer, for the years 1946, 1947, and 1948, respectively.

The Appellants, husband and wife, are residents of California. During the years in question each Appellant owned, and received rents from, an undivided one-fourth interest in certain Canadian real estate. Under the provisions of Section 27(2) of the Canadian Income War Tax Act the lessee of the property withheld a tax for each year at the rate of 15% of the gross rents. The amounts of tax withheld each year were as follows:

<u>Edward Meltzer</u>		<u>Frieda Meltzer</u>	
Year 1946	\$187.71	Year 1946	\$343.87 \$188.33
Year 1948	\$341.29	Year 1948	\$362.72

The Appellants claimed credits for the Canadian tax against their California personal income tax, the credits being disallowed by the Franchise Tax Board. They contend that the Canadian tax is allowable (a) as a credit under Section 17976 of the Revenue and Taxation Code, or (b) in the alternative, as a deduction under Section 17305 **of** the Code. The pertinent parts of these Sections are as follows:

Section 17976: "...residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another State or country ..."

Section 17305: "In computing net income there shall be allowed as a deduction taxes **or** licenses paid or accrued during the taxable year except:

* * * *

(b) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of (1) The Government of the United States or any foreign country."

The tax withheld under Section 27(2) of the Canadian Income War Tax Act was imposed by Section 27(1) of the Act. That Section imposed a tax of 15% on non-resident persons, without any exemption or deduction, in respect of the gross amount of all rents, royalties or similar payments for anything used or sold in Canada. The Appellants argue, however, that by virtue of Section 27(7) of the Act the tax, as respects rentals from real property, was a tax on net income.

The application of Section 27(7) was limited to rentals from Canadian real estate. By its terms the Section was permissive and allowed the payment of tax upon a net income basis only if a non-resident person in receipt of such rentals elected to file an income tax return. In such case provision was made for a credit of the withheld tax imposed on gross rentals by Section 27(1) and a refund of any overpayment.

During the years in question the Appellants were unaware of Section 27(7) of the Act and did not file income tax returns with the Dominion of Canada for any of said years. The tax which they paid to the Dominion of Canada, accordingly, was imposed by Section 27(1) of the Act. In the Appeal of Georgia Guettler, decided this day, we determined that Section 27(1) of the Canadian Income War Tax Act did **not** impose an income tax as it laid a tax **on** non-resident persons in respect of certain designated items of gross

receipts. Accordingly, an amount paid under that Section is not a net income tax allowable as a credit against the California tax under Section 17976 of the Revenue and Taxation Code. For the reasons stated in that Appeal, however, we have concluded that the tax paid under Section 27(1) is allowable as a deduction from gross income under Section 17305 of the Code.

O R D E R

Pursuant to the views expressed in the opinion of the Board on-file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Edward Meltzer and Frieda Liffman Meltzer to proposed assessments, of additional personal income tax in the amounts of \$36.69, \$10.33 and \$8.20 against Edward Meltzer and in the amounts, of \$36.95, \$10.67 and \$8.20 against Frieda Liffman Meltzer, for the years 1946, 1947 and 1948, respectively, be and the same is hereby modified as follows: That in computing the net income of Edward Meltzer for said years the Franchise Tax Board is directed to allow as a deduction under Section 17305 of the Revenue and Taxation Code taxes paid to the Dominion of Canada in the amounts of \$187.71, \$321.21 and 4341.29 for the years 1946, 1947 and 1948, respectively; That in computing the net income of Frieda Liffman Meltzer for said years the Franchise Tax Board is directed to allow as a deduction under Section 17305 of the Revenue and Taxation Code taxes paid to the Dominion of Canada in the amounts of \$188.33, \$343.87 and \$362.72 for the years 1946, 1947 and 1948, respectively.

Done at Sacramento, California, this 1st day of April, 1953, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
Paul R. Leake, Member
J. H. Quinn, Member
Geo. R. Reilly, Member
 , Member

ATTEST: Dixwell L. Pierce, Secretary